

1  
2  
3  
4  
5                   UNITED STATES DISTRICT COURT  
6                   WESTERN DISTRICT OF WASHINGTON  
7                   AT SEATTLE

8                   WANDA E. SMITH-JETER,

9                   Plaintiff,

10                  v.

11                  ARTSPACE EVERETT LOFTS  
12                  CONDOMINIUM ASSOCIATION,

13                  Defendant.

14                  NO. C17-1857-JPD

15                  ORDER DIRECTING CLERK TO  
16                  IDENTIFY PRO BONO COUNSEL AND  
17                  LCR 39.1 NEUTRAL FOR EARLY ADR  
18                  PROCEEDINGS

19                  This matter comes before the Court *sua sponte* following an April 26, 2018 status  
20                  conference with the parties in this matter. Dkt. 23. During the status conference, both parties  
21                  expressed interest in participating in the Court's early alternative dispute resolution ("ADR")  
22                  procedure pursuant to LCR 39.1, and plaintiff advised the Court that she would like to be  
23                  represented by pro bono counsel during those proceedings. Having reviewed plaintiff's  
24                  amended complaint, defendant's answer, the "Plan of the U.S. District Court for the W.D. of  
25                  Washington for the Representation of Pro Se Litigants in Civil Rights Actions" (the "Pro Bono  
26                  Plan"), and the balance of the record, the Court GRANTS plaintiff's request for appointment of  
27                  counsel for the limited purpose of (1) helping plaintiff file a second amended complaint that  
28                  clarifies her claims and names the correct parties; and (2) conducting an early ADR procedure  
29                  pursuant to LCR 39.1.

Generally, the decision to appoint pro bono counsel rests within “the sound discretion of the trial court and is granted only in exceptional circumstances.” *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004). A finding of exceptional circumstances requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his or her claims *pro se* in light of the complexity of the legal issues involved. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). These factors must be viewed together before reaching a decision on a request for counsel. *Id.*

At this early stage of litigation, plaintiff has failed to demonstrate that exceptional circumstances warrant the appointment of counsel for the duration of the case. However, the Court also finds that the unique circumstances of this case indicate that the interests of justice will best be served if counsel from the Western District Pro Bono Panel is appointed to represent the plaintiff during an early ADR procedure pursuant to LCR 39.1.

In making this finding, the undersigned has considered the nature and complexity of plaintiff’s factual and legal claims. The undersigned finds that the *pro se* plaintiff, defendant, and the Court will all benefit from appointed counsel’s assistance in improving communication between the parties, limiting, narrowing or simplifying the issues in dispute via the filing of a second amended complaint, and potentially achieving settlement of some or all issues between the parties through an early ADR procedure.

The parties are directed to read and comply with the deadlines and procedures outlined in § 3(g)-(i) of the Pro Bono Plan.<sup>1</sup> Specifically, following entry of the Order of Appointment by the undersigned, the Clerk shall send the appointed attorney a Notice of Appointment and Interim Notice of Appearance, which shall include a statement that defense counsel must only communicate with the appointed attorney, and not the plaintiff, in accordance with Rules 4.2(b) and 4.3(b) of the Washington Rules of Professional Conduct. See Pro Bono Plan § 3(g).

---

<sup>1</sup> The Pro Bono Plan is available on the Court’s website via links to “Attorneys” and “Pro Bono Panel” ([www.wawd.uscourts.gov/attorneys/pro-bono-panel](http://www.wawd.uscourts.gov/attorneys/pro-bono-panel)).

1       The Clerk's Notice of Appointment and Interim Notice of Appearance also suspends the  
2 provisions of LCR 16(a) and (d) requiring a scheduling conference, joint status report, and  
3 scheduling order, until completion of the ADR proceedings. *See* Pro Bono Plan § 3(i).

4           As soon as practical following appointment, pro bono counsel is directed to confer with  
5 the plaintiff regarding the ADR procedures available under LCR 39.1(a)(3). Pro bono counsel  
6 shall then meet and confer with opposing counsel to develop a plan for an early ADR  
7 procedure, and shall attempt to reach agreement on the factors listed in § 3(i)(iv)(A)-(E). The  
8 parties are advised that they are required to submit a Joint Pro Bono ADR Status Report  
9 addressing these factors not later than twenty (20) days following the Clerk's Notice of  
10 Appointment and Interim Notice of Appearance. *See* Pro Bono Plan to § 3(i)(v).

11           Unless otherwise ordered, the early ADR procedure shall be completed not later than  
12 seventy-five (75) days following the Clerk's Notice of Appointment and Interim Notice of  
13 Appearance. *See* Pro Bono Plan § 3(i)(vii). Upon completion of the ADR procedure,  
14 appointed counsel shall submit a report to the Court and opposing counsel stating (1) when the  
15 ADR procedure occurred, and (2) whether the case settled as to some or all issues.<sup>2</sup> Following  
16 submission of this report, appointed counsel's limited representation shall be deemed  
17 complete, and counsel may submit a proposed order terminating the limited representation. At  
18 that time, appointed counsel may move for an award of attorney's fees under any applicable  
19 authority, although the Court is unable to assure counsel of compensation.

20           Accordingly, the Clerk of the Court is DIRECTED to identify counsel from the Pro  
21 Bono Panel to represent plaintiff for the limited purpose of helping plaintiff file a second  
22 amended complaint and conducting an early ADR procedure pursuant to LCR 39.1. Upon  
23 notification from the Clerk, the undersigned shall appoint the selected attorney to represent the  
24  
25

---

26           <sup>2</sup> If the ADR procedure was a mediation, however, the mediator's report required by  
LCR 39.1(c)(6) will serve in lieu of appointed counsel's report.

1 plaintiff in early ADR proceedings in this case. Finally, the Clerk is directed to send a copy of  
2 this Order and § 3(g)-(i) of the Pro Bono Plan to plaintiff and counsel for defendant.

3 DATED this 26th day of April, 2018.  
4

5   
6 JAMES P. DONOHUE  
7 United States Magistrate Judge  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26